IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 573 OF 1997

State of Maharashtra ..Appellants

versus

Motiram R. Mali (Jadhav) ..Respondent

Mr. S. N. Gawade, A.G.P. for the Appellants.

None for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 28TH JANUARY,2005

ORAL ORDER :

1. Heard learned AGP for the Appellants - State. Respondent is served nobody is present for him nor he is present.

2. This appeal arises out of the Land Acquisition Reference No.127 of 1986. The respondent - claimant's land was acquired by Notification under Section 4 dated 25.4.1980 and Notification under Section 6 dated 27.1.1981. The Award in this case was passed on 25.3.1982. The claimant was the owner of land Gat No.304 and 315 admeasuring 4 hectares and 4 Are and 5 Hectare and 76 Ares and Potkharab land admeasuring 58 Are within

the limits of Kayade, Taluka Malegaon, Dist: Nashik. Government acquired 6 Ares land from Gat No.304 and from Gat no. 315, 3 hectares and 76 Ares was acquired for construction of percolation tank at Kayade. The SLAO awarded compensation at Rs.8,000/- per hectare in respect of Jirayat Land i.e. dry crop land and Rs.10,000/- per hectare in respect of Bagayat land. Claimant made reference and the Reference Court enhanced compensation at Rs.15,000/- per hectare for Jirayat land and Rs.22,500/- for bagayat land and for Potkharab land Rs.500/- per hectare. The Reference Court also awarded interest at the rate of 15% from 1.4.1980 to 25.3.1982 and further interest from 26.2.1982 till the date of realisation.

3. Learned AGP pointed out, firstly that the interest granted by the lower court was against the principles laid down by the Supreme Court in judgment reported in **(2000) 7 Supreme Court Cases 756 Krishi Utpadan Mandi Samiti vs. Kanhaiya Lal & others,** because in that judgment it is held that if the award is before the cut of date i.e. 30.4.1982 then claimant would not be entitled to interest as awarded by the trial court and he was entitled to interest at the rate of 6% per annum until realisation.

4. Secondly the learned AGP pointed out that though the claimant has examined two witnesses for proving two sale instances. The trial court has relied upon only one sale instance out of them, which were proved by P.W. 2 Daulat Dodha Patil examined for and on behalf of the claimant, the sale deed was dated 8.6.1979 and P.W. 2 sold 3 Acres (1 Hectare 21 Are) for Rs.20,000/-. It was a dry crop land. Therefore the learned lower court on applying the anology came to the conclusion that if Rs.20,000/- and Rs.16,000/- was the rate per hectare for the dry crop land then Rs.22,500/- could be proper rate for Bagayat land. The court also relied upon 7/12 extract in which there was an entry to the effect that portion of the acquired land was bagayat.

5. So far as the contention of the learned AGP regarding payment of interest is concerned, the judgment of the Supreme Court relied upon by him, is absolutely clear. In that case also the Award came to be passed by the Land Acquisition Officer on 27.12.1977 therefore the court held that the provisions of the Amended Act were not applicable and awarded interest at the rate of 6% per annum, therefore the contention of the learned AGP is required to be accepted.

6. So far as enhancement of compensation at the rates stated above is concerned, it is true that the claimant examined only one person to prove sale instance i.e. a solitary sale instance has been proved in support of his case. The evidence of the other witness was disregarded by the court on the ground that he comes from different village and there is no similarity between the lands, therefore the evidence of only one witness P.W. 2 will have to be considered. He states that he sold 1 Hectare 21 Ares land but though price stated in the sale deed is Rs.20,000/-, he did not actually receive the amount of Rs.20,000/-, according to him Rs.4,300/- were to be given to him by his brother after execution of the sale deed and in cross examination he admitted that he has no receipt to show that his brother has actually paid him the aforesaid amount. He did not examine his brother who was present in the court on that date in support of his contention.

7. Learned AGP therefore pointed out that it appears that because the sale deed was between two brothers higher rate for land was shown in the sale deed when in fact the vendor P.W. 2 actually received Rs.4,300/- less, therefore according to him even if the evidence of P.W. 2 is accepted as it is, the price of the dry crop land comes to Rs.15,700/- after deducting Rs.4,300/- from

Rs.20,000/-. In that view of the matter he contended that the grant of compensation by the lower court at Rs.12,000/- for the dry crop land is totally unjustified. Secondly he contended that award of compensation at Rs.22,500/- is also unjustified because there is no sale instance in respect of any bagayat land.

8. I find considerable force in the submissions made by the learned AGP. Compensation at Rs.15,000/- per hectare for the dry crop land appears to be excessive, even if evidence of P.W. 2 is accepted subject to the above condition. Therefore, this appeal is required to be allowed. Rs.12,000/- for the dry crop land and Rs.16,000/- for the bagayat land appears to be a proper consideration or compensation in the circumstances of the case. Therefore, I pass the following order:

ORDER

. Appeal is partly allowed. The order of the lower court is modified. The claimant will be entitled to Rs.12,000/- per hectare for dry crop land and Rs.16,000/- per hectare for bagayat land. Claimant will also be entitled to interest at the rate of 6% per annum only from the dates mentioned by the lower court. Claimant will be liable to pay

costs to the State.

28.1.2005 (D.G. DESHPANDE,J.)